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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,400	08/28/2001	Devin Eugene Mix	12929.1064US01	6151

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MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER
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GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/941,400

Applicant(s)

MIX, DEVIN EUGENE

Examiner

Brian K. Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 4,6,15,17,24,30,38 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,7-14,16,18-23,25-29,31-37,39-43,45-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Claims 4,6,15,17,24,30,38, and 44 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8.

***Drawings***

The proposed drawing correction filed on July 11, 2003 has been approved.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37,39, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Conroy et al. (U.S. Patent No. 3,742,189).

Conroy et al. shows in figures 1-2 a simulated fire comprising a flame simulation apparatus including a flame element (38) coupled to a device (28) that alters the position of the flame element.

Claims 1,3,7,12,14,18,23,25,29,31,32,37,39,40,43, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen (U.S. Patent No. 2,055,910).

Rasmussen shows in figures 10 and 11 a “fireplace” including a front panel (57), an enclosure (59,60) and a flame simulation apparatus including a flame element (64) coupled to a device (68,70,71) that alters the position of the flame element. In regard to claim 3, the device (68,70,71) moves the flame element and is considered to be a means for moving the flame element from a fixed position. In regard to claim 7, Rasmussen shows a light source (63). In regard to claims 23 and 43, as broadly defined, the device (68,70,73) is considered to be a mechanical structure.

Claims 1-3,5,7,11-14,16,18,22,23,25,28,29,31,32,36,37,39,40,43,45, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Pyper (U.S. Patent No. 1,382,229).

Pyper shows in figures 1-5 a “fireplace” including a front panel (12 having an opening for viewing) and a flame simulation apparatus including a flame element (20) coupled to a device (21,22,23,24,25 and 28,29) that alters the position of the flame element. In regard to claim 2, Pyper shows a blower (28,29). In regard to claim 3, the blower (28,29) moves the flame element and is considered to be a means for moving the flame element from a fixed position. In regard to claim 5, Pyper shows a blower (28,29) and a mechanical device (21,22,23,24,25) for moving the position of the element (20) relative to the rest of the structure. The applicant defines in the specification, page 9, lines 1-8, that any mechanical means can be used to move the flame element. Since the applicant defines the mechanical means in such a broad manner, the mechanical device of Pyper is considered to fall within the applicant’s definition of moving means. In regard to claim 7, Pyper shows a light source (19). In regard to claim 11, Pyper

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shows in figure 1 a log set (the structure directly below the flame in figure 1 is considered to be the log set as broadly defined).

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3,7,8,12-14,18,19,37,39-41,43, and 45-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Harrison (U.S. Patent No. 6,461,011).

Harrison shows in figures 1-5 a "fireplace" including a front panel (any of the four side panels which have to be at least translucent in order to allow the flame to be seen) and a flame simulation apparatus including a flame element (14) coupled to a device (18,20) that alters the position of the flame element. In regard to claim 2, Harrison shows a blower (18). In regard to claim 3, the blower (18) moves the flame element and is considered to be a means for moving the flame element from a fixed position. In regard to claim 7, Harrison shows a light source (16). In regard to claim 8, Harrison discloses in column 2, lines 37-39 the idea of making the flame element from silk. In regard to claim 43, as broadly defined, the blower (18) is considered to be a mechanical structure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,20,42, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison (U.S. Patent No. 6,461,011) in view of Butterfield (U.S. Patent No. 4,965,707).

Harrison discloses the applicant's basic inventive concept except for treating the flame element with a stiffening material. Butterfield discloses in column 3, lines 65-68 the idea of coating a flame element to improve reflectivity. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Harrison by coating the flame element since this would create a more amusing and aesthetically pleasing display, the coating would inherently stiffen the flame element a small amount.

Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conroy et al. (U.S. Patent No. 3,742,189) in view of Butterfield (U.S. Patent No. 4,965,707).

In regard to claim 41, Conroy et al. does not disclose whether the flame element is made from silk. Butterfield discloses in column 3, lines 65-66 the idea of making a flame element from silk. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Conroy et al. by making the flame element from silk since this would create a more aesthetically pleasing display. In regard to claim 42, Conroy et al. does not disclose treating the flame element with a stiffening material. Butterfield discloses in column 3, lines 65-68 the idea of coating a flame element to improve reflectivity. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Conroy et al. by coating the flame element since this would create a more amusing and aesthetically pleasing display, the coating would inherently stiffen the flame element a small amount.

Claims 1-3,7,11-14,18,22,43,45, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conroy et al. (U.S. Patent No. 3,742,189) in view of Hess et al. (U.S. Patent No. 5,642,580).

Conroy et al. shows in figures 1-2 a simulated fire comprising a flame simulation apparatus including a flame element (38) coupled to a device (28) that alters the position of the flame element. Conroy et al. does not disclose the use of a front panel/enclosure for the fire. Hess et al. shows in figures 1-2 a flame simulation assembly that includes a front panel (24) and an enclosure (14). In view of the teachings of Hess et al. it would have been obvious to one in the art to place the simulated fire within an enclosure with a front panel since this would create a more realistic and aesthetically pleasing display as well as protecting the simulated fire from dust, dirt, and damage. In regard to claim 2, Conroy et al. shows a blower (28). In regard to claim 3, the blower (28) moves the flame element and is considered to be a means for moving the flame element from a fixed position. In regard to claim 7, Conroy et al. shows a light source (68). In regard to claim 11, Conroy et al. shows a log set (14,16). In regard to claim 43, as broadly defined, the blower (28) is considered to be a mechanical structure.

Claims 8,9,19,20,47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conroy et al. (U.S. Patent No. 3,742,189) in view of Hess et al. (U.S. Patent No. 5,642,580) as applied to claims 1,12,37, and 43 above and further in view of Butterfield (U.S. Patent No. 4,965,707).

In regard to claims 8,19, and 47, Conroy et al. does not disclose whether the flame element is made from silk. Butterfield discloses in column 3, lines 65-66 the idea of making a flame element from silk. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Conroy et al. by making the flame element from silk since this would create a more aesthetically pleasing display. In regard to claims 9,20 and 48, Conroy et al. does not disclose treating the flame element with a stiffening material. Butterfield discloses in column 3, lines 65-68 the idea of coating a flame element to improve reflectivity. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Conroy et al. by coating the flame element since this would create a more amusing and aesthetically pleasing display, the coating would inherently stiffen the flame element a small amount.

Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conroy et al. (U.S. Patent No. 3,742,189) in view of Hess et al. (U.S. Patent No. 5,642,580) as applied to claims 1 and 20 above and further in view of Hecker (U.S. Patent No. 5,426,879).

Conroy et al. in view of Hess et al. discloses the applicant's basic inventive concept except for attaching mirrored (reflective) surfaces to the back and side panels. Hecker discloses in column 5, lines 50-55 the idea of placing reflective material on the back and side panels to increase the amount of light reaching the front face. In view of the teachings of Hecker it would have been obvious to one in the art to modify Conroy et al. in view of Hess et al. by attaching reflective surfaces to the back and side panels since this would allow the flame element to be illuminated in a more brilliant manner which would create a more amusing and aesthetically pleasing display.



Claims 8,9,19,20,26,27,33,34,41,42,47, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen. (U.S. Patent No. 2,055,910) in view of Butterfield (U.S. Patent No. 4,965,707).

In regard to claims 8,19,26,33,41, and 47, Rasmussen does not disclose whether the flame element is made from silk. Butterfield discloses in column 3, lines 65-66 the idea of making a flame element from silk. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Rasmussen. by making the flame element from silk since this would create a more aesthetically pleasing display. In regard to claims 9,20,27,34,42, and 48, Rasmussen does not disclose treating the flame element with a stiffening material. Butterfield discloses in column 3, lines 65-68 the idea of coating a flame element to improve reflectivity. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Rasmussen by coating the flame element since this would create a more amusing and aesthetically pleasing display, the coating would inherently stiffen the flame element a small amount.

Claims 10,21, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen (U.S. Patent No. 2,055,910) in view of Hecker (U.S. Patent No. 5,426,879).

Rasmussen discloses the applicant's basic inventive concept except for attaching mirrored (reflective) surfaces to the back and side panels. Hecker discloses in column 5, lines 50-55 the idea of placing reflective material on the back and side panels to increase the amount of light reaching the front face. In view of the teachings of Hecker it would have been obvious to one in

the art to modify Rasmussen by attaching reflective surfaces to the back and side panels since this would allow the flame element to be illuminated in a more brilliant manner which would create a more amusing and aesthetically pleasing display.

Claims 23,25,43, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen figures 10 and 11 (U.S. Patent No. 2,055,910) in view of Rasmussen figure 2 (U.S. Patent No. 2,055,910).

Rasmussen shows all of the applicant's claimed structure in figures 10 and 11 except for using a "mechanical structure" for moving the flame element. Rasmussen shows another embodiment in figure 2 the idea of using a mechanical structure (28,27) for rotating the display element about a vertical axis. In view of the teachings of figure 2 in Rasmussen it would have been obvious to one in the art to modify the figures 10 and 11 embodiment of Rasmussen since this would allow the speed at which the flame element is rotated to be varied as desired and would help to reduce the amount of heat generated within the enclosure.

Claims 26,27,47,48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen figures 10 and 11 (U.S. Patent No. 2,055,910) in view of Rasmussen figure 2 (U.S. Patent No. 2,055,910) as applied to claims 23 and 43 above and further in view of Butterfield (U.S. Patent No. 4,965,707).

In regard to claims 26 and 47, Rasmussen figures 10 and 11 in view of Rasmussen figure 2 do not disclose whether the flame element is made from silk. Butterfield discloses in column 3, lines 65-66 the idea of making a flame element from silk. In view of the teachings of

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Butterfield it would have been obvious to one in the art to modify Rasmussen by making the flame element from silk since this would create a more aesthetically pleasing display. In regard to claims 27 and 48, Rasmussen figures 10 and 11 in view of Rasmussen figure 2 do not disclose treating the flame element with a stiffening material. Butterfield discloses in column 3, lines 65-68 the idea of coating a flame element to improve reflectivity. In view of the teachings of Butterfield it would have been obvious to one in the art to modify Rasmussen by coating the flame element since this would create a more amusing and aesthetically pleasing display, the coating would inherently stiffen the flame element a small amount.

Claims 11,22, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen (U.S. Patent No. 2,055,910) in view of Hess et al. (U.S. Patent No. 5,462,580).

Rasmussen discloses the applicant's basic inventive concept except for attaching a log set to the device. Hess et al. shows in figures 1 and 2 a log set (26) attached within the enclosure of the display device. In view of the teachings of Hess et al. it would have been obvious to one in the art to modify Rasmussen by attaching a log set within the enclosure since this would create a more amusing, realistic, and aesthetically pleasing display device.

Claims 10,21, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pyper (U.S. Patent No. 1,382,229) in view of Hecker (U.S. Patent No. 5,426,879).

Pyper discloses the applicant's basic inventive concept except for attaching mirrored (reflective) surfaces to the back and side panels. Hecker discloses in column 5, lines 50-55 the idea of placing reflective material on the back and side panels to increase the amount of light

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reaching the front face. In view of the teachings of Hecker it would have been obvious to one in the art to modify Pyper by attaching reflective surfaces to the back and side panels since this would allow the flame element to be illuminated in a more brilliant manner which would create a more amusing and aesthetically pleasing display.

Applicant's arguments with respect to claims 1-3,5,7-14,16,18-23,25-29,31-37,39-43,45-48 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (703) 308-1011. The examiner can normally be reached on M-F 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (703) 308-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

  
BRIAN K. GREEN  
PRIMARY EXAMINER

bkg  
Oct. 17, 2003